FILE COPY

Office - Supreme Court,
FILED
APR 13 193
CHARLES ELMORE CR
CL

No. 268

# In the Supreme Court of the United States

OCTOBER TERM 1935

THE SUGAR INSTITUTE, INC., ET AL., APPELLANTS

*v.*

UNITED STATES OF AMERICA

**MOTION TO REQUIRE APPELLANTS TO PAY COST OF PRINTING EXHIBITS AND SUPPLEMENTAL RECORD ON APPEAL**

# In the Supreme Court of the United States

OCTOBER TERM 1935

---

No. 268

THE SUGAR INSTITUTE, INC., ET AL., APPELLANTS

*v.*

UNITED STATES OF AMERICA

---

**MOTION TO REQUIRE APPELLANTS TO PAY COST OF PRINTING EXHIBITS AND SUPPLEMENTAL RECORD ON APPEAL**

This is a motion by appellee to require appellants to pay the cost of printing the exhibits contained in Volumes III, IV, and V (R. 1185–2379), and the supplemental transcript contained in Volume VI (84 pages), of the record on appeal.

After this appeal was docketed, appellants filed a motion to be relieved of the obligation of printing all exhibits, and appellee filed a memorandum in opposition. Appellee also filed a suggestion of a diminution of the record, and appellants filed a memorandum in opposition thereto.



59675—36

On October 14, 1935, this Court made the following disposition of these motions:

> Upon consideration of the motion by appellants to be relieved of the obligation of printing exhibits, and of the suggestion by appellee of a diminution of the record and motion for a writ of certiorari,
>
> It is ordered that leave be, and it hereby is, granted to the United States to print, under the supervision of the Clerk of this Court, the narrative statement and the exhibits referred to in these motions, subject to such disposition of the expense thereof as the Court may hereafter be advised.

The Department of Justice thereupon bore the initial expense of printing the exhibits contained in Volumes III, IV and V of the record ($4,829.91), and Volume VI, containing 84 pages of testimony and exhibits excluded from the record on appeal by the District Court ($311.37)—a total of $5,141.28.

On March 30, 1936, this Court handed down its opinion in this case, affirming the decree with minor modifications.

In cases where the United States is appellee, the appellant normally bears the cost of printing the record on appeal, particularly where the appellant does not obtain a reversal.

The exhibits designated for printing by the United States were the most essential part of the record on appeal. They consisted largely of let-

ters and telegrams written by appellants and constituted the primary evidence of the restraints enjoined. Although the record in the District Court included more than 10,000 pages of exhibits, the exhibits printed for the record in this Court comprised only 1,195 printed pages. Only those exhibits which were regarded by appellee as being essential to a determination of the issues raised on appeal were printed.

The original exhibits as filed by appellants were not readily accessible to the Court, and many of them consisted of poor copies, which were difficult to read. They were tied together in three large bundles without an index. Appellee had only one incomplete set of the exhibits, and could not conveniently prepare the extensive brief required by the case without having the essential parts of the record available in printed form.

A record containing the narrative statement of testimony (Volumes I and II) without the designated exhibits would have presented to the Court an unbalanced and one-sided picture of the case. More than 70 percent of the narrative statement (R. 505–1168) consisted of appellants' evidence. On the other hand, substantially more than 70 percent of the exhibits filed in the District Court were Government exhibits. The relative importance of the exhibits and oral testimony may be judged by the fact that the District Court in its opinion (R. 86–260) made constant reference to the ex-

hibits and cited more than 140 of them, whereas the opinion referred only occasionally to the oral testimony, and then generally to point to its bearing upon one or more exhibits.

The 84 pages of exhibits and testimony comprising the supplemental transcript of record consisted of evidence regarding (1) fines and penalties, (2) blacklisting of sugar distributors, (3) attempted bribes by Institute investigators, and (4) allocation of territory. Although this evidence was not relied upon by the District Court in reaching its conclusion that defendants were engaged in a conspiracy to restrain trade, it was properly part of the record on appeal because of the probability that this Court might rely partially upon this evidence in determining whether the restraints were unreasonable.

It is respectfully submitted that the record on appeal would not have been complete without the additional portions which this Court permitted appellee to print, that appellee has earnestly cooperated with appellants to eliminate the printing of unnecessary exhibits, that the additional cost of $5,141.28 is small compared with the entire cost and importance of this litigation, that the cost of printing essential parts of the record should be borne by the appellants in this case in accordance with the usual practice, and that the appellants should, therefore, be ordered to pay $5,141.28 costs to reimburse appellee for the ex-

pense of printing additional parts of the record on appeal.

STANLEY REED,
*Solicitor General.*
ANGUS D. MACLEAN,
WALTER L. RICE,
*Special Assistants to the Attorney General.*

APRIL 1936.

U. S. GOVERNMENT PRINTING OFFICE: 1936